

[NOTE: Each PPA request is evaluated on its own merits. The full text of recent prospective purchaser agreements is provided for information purposes only. The Model Prospective Purchaser Agreement will serve as a starting point for structuring future agreements.]

**AGREEMENT AND COVENANT NOT TO SUE  
BETWEEN UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION II  
AND CITY OF PERTH AMBOY, NEW JERSEY**

**I. INTRODUCTION**

1. This Agreement and Covenant Not to Sue ("Agreement") is made and entered into by and between the United States on behalf of the Environmental Protection Agency ("EPA") and the City of Perth Amboy, New Jersey (collectively the "the Parties").
2. This Agreement is entered into pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9601, et seq. and the authority of the Attorney General of the United States to settle claims of the United States.
3. The City of Perth Amboy, New Jersey, intends to acquire by gift, purchase or condemnation a 3.8-acre property on Mechanic Street, Perth Amboy, New Jersey ("Site"), currently owned by the Mechanic Street Realty Corporation. The Site was a former industrial complex of approximately twenty-five (25) abandoned buildings, and has been the subject of a CERCLA removal action performed by EPA. The City has designated the property comprising the Site for redevelopment as a Brownfield.
4. The Parties agree to undertake all actions required by the terms and conditions of this Agreement. The purpose of this Agreement is to settle and resolve, subject to reservations and limitations contained in Sections VIII, IX, X, and XI, the potential liability of the City for the Existing Contamination at the Site which would otherwise result from the City becoming the owner of the Site.
5. The Parties agree that the City's entry into this Agreement, and the actions undertaken by the City in accordance with the Agreement, do not constitute an admission of any liability by the City.

6. The resolution of this potential liability, in exchange for provision by the City to EPA of a substantial benefit, is in the public interest.

## II. DEFINITIONS

7. Unless otherwise expressly provided herein, terms used in this Agreement which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations, including any amendments thereto.
  - a. "EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.
  - b. "Existing Contamination" shall mean any hazardous substances, pollutants or contaminants, present or existing on or under the Site as of the effective date of this Agreement.
  - c. "Parties" shall mean the United States on behalf of EPA and the City of Perth Amboy.
  - d. "City" shall mean the municipality known as the City of Perth Amboy, New Jersey.
  - e. "Site" or "Property" shall mean the real property and any structures located at 500 Mechanic Street, in Perth Amboy, New Jersey, known as the Mechanic Street Realty Corporation Site, encompassing approximately 3.8 acres.
  - f. "United States" shall mean the United States of America, its departments, agencies, and instrumentalities.

## III. STATEMENT OF FACTS

8. The Mechanic Street Realty Corporation ("MSRC") is the current owner of the Site, and has owned the Site since 1972. EPA's investigations of the Site revealed the presence of CERCLA hazardous substances in tanks, containers, soils, sumps, trenches, and sewers, as well as friable asbestos, at the Site.
9. EPA issued a Unilateral Administrative Order, Index No. II CERCLA 97-0116 ("Order"), to MSRC to perform removal response activities to address the contamination posed by conditions at the Site. When MSRC failed to comply with the Order, EPA took response actions at the Site pursuant to Section 104 of CERCLA, 42 U.S.C. Section 9604, as specifically authorized by an Action Memorandum dated September 26, 1997.

10. At the time of EPA's response action, there had been releases and threatened releases at the Site of flammable, corrosive, organic, and cyanide bearing materials. Sampling indicated the presence of CERCLA hazardous substances including, but not limited to, volatile organic compounds and metals in tanks and containers, soils, sump, trenches, and sewers, and friable asbestos on building floors. As part of its response action, EPA identified, stabilized and disposed of hazardous substances and wastes found at the Site to reduce the threat of release and the potential for exposure through direct human contact and on-site releases.
11. As of the date of this Agreement, EPA has incurred costs in excess of \$861,586.84 in connection with response actions taken at the Site.
12. The City represents, and for the purposes of this Agreement EPA relies on those representations, that the City's involvement with the Site has been limited to the following:
  - a. it has undertaken standard municipal actions such as collecting taxes;
  - b. it has designated the Site as part of its "Focus 2000" redevelopment plan;
  - c. it has received a \$2 million grant from the U.S. Department of Housing and Urban Development, a portion of which is being used to assist in preparing the Property for redevelopment, which includes, but is not limited to the demolition of buildings on the Property;
  - d. it has received a \$200,000 Brownfields Economic Redevelopment Initiative grant from EPA for assessment of potential sites, including the Site, in Perth Amboy for redevelopment;
  - e. it has received a \$163,000 grant from the State of New Jersey Hazardous Discharge Site Remediation Program to assist in its environmental assessment of the Property;
  - f. it plans to sell the Property either:
    - 1) at no profit to itself to either i) the Middlesex County Vocational and Technical High School Board of Education ("VocTech") for the purpose of building a public vocational school on the Property, or ii) any other governmental agency or unit of government for redevelopment for public use; or
    - 2) at a profit to any other party for redevelopment.

#### IV. CONSIDERATION

Consideration If City Transfers Site to VocTech or Another  
Governmental Agency or Unit of Government for Redevelopment of  
the Site for Public Use

13. In consideration of and in exchange for the United States' Covenant Not to Sue in Section IX herein and Contribution Protection in Section XIX herein, the City agrees to perform the work described in Section V (Work To Be Performed) below.

Payment and Consideration If City Sells Site to Any Other Party

14. In consideration of and in exchange for the United States' Covenant Not to Sue in Section IX herein and Contribution Protection in Section XIX herein, the City agrees to perform the work described in Section V (Work To Be Performed) below.
15. In further consideration of and in exchange for the United States' Covenant Not to Sue in Section IX herein and Contribution Protection in Section XIX herein, the City agrees to pay to EPA fifty percent (50%) of the proceeds of the sale of the Site after the City deducts any unpaid taxes on the Property owed and due to the City and its documented transaction costs associated with the sale of the Property from the sale proceeds or the total amount of EPA's incurred costs, whichever is less. The City shall make payment to EPA within thirty (30) days of the sale of the Site. The City shall make this payment via EFT as described below.

Payment and Consideration If City Leases Site to Any Party

16. In consideration of and in exchange for the United States' Covenant Not to Sue in Section IX herein and Contribution Protection in Section XIX herein, the City agrees to perform the work described in Section V (Work To Be Performed) below.
17. In further consideration of and in exchange for the United States' Covenant Not to Sue in Section IX herein and Contribution Protection in Section XIX herein, the City agrees to pay to EPA fifty percent (50%) of the proceeds of any lease of the Site of at least one year's duration after the City deducts any unpaid taxes on the Property owed and due to the City and its documented transaction costs associated with the lease of the Site or the total amount of EPA's incurred costs, whichever is less. The City shall make payment to EPA within fifteen (15) days of the City's receipt of each lease payment and shall be in the amount of

fifty percent (50%) of each lease payment received by the City. Such payments to EPA shall cease upon reaching the lesser of the two amounts as described in this subparagraph above. The City shall make payments via EFT as described below. The City agrees to notify EPA fifteen (15) days in advance of the execution of any lease regarding the Site and agrees to submit to EPA a certified copy of any such lease within fifteen (15) days after the execution of any such lease.

#### Method of Payment

18. All payments required by this Agreement shall be remitted via Electronic Funds Transfer ("EFT") to Mellon Bank, Pittsburgh, Pennsylvania, as follows:

To make payment via EFT, the City shall provide the following information to its bank:

- i. Amount of payment
- ii. Title of Mellon Bank account to receive the payment:  
**EPA**
- iii. Account code for Mellon Bank account receiving the payment: **9108544**
- iv. Mellon Bank ABA Routing Number: **043000261**
- v. Name of Respondent: **City of Perth Amboy**
- vi. Case number: **CERCLA Index No. 02-99-2024**
- vii. Site/spill identifier: **02CA**

Along with this information, the City shall instruct its bank to remit payment in the agreed upon amount via EFT to EPA's account with Mellon Bank. To ensure that the payment is properly recorded, The City should send a letter, within one (1) week of the EFT, that references the date of the EFT, the payment amount, the name of the site, the case number, and your name and address, to the person identified in Section XVI, Notices and Submissions.

19. Amounts due and owing pursuant to the terms of this Agreement but not paid in accordance with the terms of this Agreement shall accrue interest at the rate established pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), compounded on an annual basis.

V. WORK TO BE PERFORMED

20. a. Work

1) The City agrees to have the buildings on-Site promptly abated of all asbestos, demolished, and removed from the Site to appropriate disposal facilities. All potentially contaminated demolition debris will be sampled prior to disposal to determine if hazardous wastes and/or hazardous substances are present, and to determine appropriate disposal options.

2) The City also agrees to protect all sumps, trenches and sewers at the Site, as depicted on the Sump/Trench Sampling Location map from EPA's February 19, 1998 Mechanic Street Superfund Site Sampling Trip Report, during demolition. The City further agrees to remediate to the extent required by New Jersey's Technical Requirements for Site Remediation, N.J.A.C. 7:26E, all hazardous substances in the sumps, trenches, and sewers at the Site prior to construction of the vocational school or other redevelopment as described in Paragraph 12.f.

3) The City also agrees to conduct a preliminary assessment and site investigation to identify areas of concern at the Site and determine the need for additional cleanup. The preliminary assessment and site investigation will be conducted pursuant to a Memorandum of Agreement (Attached) with the New Jersey Department of Environmental Protection ("NJDEP") and the New Jersey Administrative Process for Voluntary Cleanups pursuant to N.J.A.C. 7:26C-3.1 et seq..

4) All asbestos abatement, demolition, investigation, excavation, remediation, waste removal, and any other activities necessary to perform the work required by this Section shall be accomplished in strict compliance with all applicable federal, state, and local laws and regulations, including, but not limited to, the Clean Air Act's National Emission Standard for Hazardous Air Pollutants for asbestos, and shall be performed only by persons who are qualified, trained and licensed for the work being performed.

5) The City recognizes that EPA's prior response actions addressed the immediate threat to human health and the environment posed by the hazardous substances stored at the Site, and that additional remediation by the City, pursuant to its Memorandum of Agreement and participation in the New Jersey Administrative Process for Voluntary Cleanups, may be required to allow for redevelopment of the Site. EPA

understands that the remediation of the sumps, trenches and sewers as described in Paragraph 20.a.2) above will be conducted under the oversight of the NJDEP pursuant to the requirements of the New Jersey Voluntary Cleanup Program at N.J.A.C. 7:26C-3.1. et seq. and any Memorandum of Agreement entered into by the City and NJDEP pursuant to those regulations. Nothing in this subparagraph modifies a) the City's acknowledgment, pursuant to Paragraphs 26, 27, and 28 of this Agreement, that the Work To Be Performed must be completed to the satisfaction of EPA, or b) EPA's ability to respond to the Site pursuant to its statutory authority. EPA will consider the Work To Be Performed completed to its satisfaction provided that the City complies with N.J.A.C. 7:26E (Technical Requirements for Site Remediation), N.J.A.C. 7:26C-3.1 et seq. (Administrative Process for Voluntary Cleanups), N.J.A.C. 7:26C-1.1 et seq. (General Information), and the requirements of Paragraph 20.a.4 above.

b. Designation of Project Coordinator. The City agrees to select a Project Coordinator and notify EPA of the Project Coordinator's name, address, telephone number, and qualifications within five (5) business days after the effective date of this Agreement. The Project Coordinator will provide at least five (5) business days notice to EPA prior to the start of any work as described in Paragraph 20.a. The Project Coordinator will be responsible for oversight of the work described in Paragraph 20.a. To the greatest extent possible, the Project Coordinator will be present on-Site or readily available during Site work.

c. Designation of On-Scene Coordinator. The current On-Scene Coordinator ("OSC") for the response activities addressed in this Agreement is Joseph Cosentino. The OSC or his/her designated agent(s) will observe the conduct of the work being performed pursuant to Paragraph 20.a. to ensure that it is performed consistent with the Remedial Action Work Plan (see Paragraph 20.d.1) below) and all other applicable federal, state, and local laws and regulations.

d. Submissions

1) The City agrees to submit to NJDEP for its determination pursuant to N.J.A.C. 7:26C-3.3 a Remedial Action Work Plan ("RAWP") providing for the performance of the remediation of the sumps, trenches and sewers as described in Paragraph 20.a.2) above. The City agrees not to commence the work addressed in the RAWP until NJDEP has provided its determination. The City also agrees to send a copy of the



RAWP to EPA simultaneously with the City's submission of the RAWP to NJDEP.

2) The City agrees to submit a Remedial Action Report ("RAR") to NJDEP for its determination pursuant to N.J.A.C. 7:26C-3.3 summarizing the actions taken to comply with the work described in the RAWP. The City also agrees to send a copy of the RAR to EPA simultaneously with the City's submission of the RAR to NJDEP.

3) The City agrees to send to EPA a copy of any and all written determinations by the NJDEP regarding the remediation of the sumps, trenches and sewers within three (3) business days of the City's receipt of such determinations. If NJDEP issues no written determinations, the City agrees to notify EPA in writing of the substance of any non-written determinations by NJDEP within three (3) business days of the City's receipt of any non-written determinations. The City agrees that such notification shall be signed by an authorized representative of the City.

e. Mailings. The plans, reports, determinations or notifications for EPA's receipt as described in Paragraph 20.d. above shall be sent by certified mail, return receipt requested, or express mail to the EPA addressees listed in Section XVI (Notices and Submissions).

#### VI. ACCESS/NOTICE TO SUCCESSORS IN INTEREST

21. Commencing upon the date that it acquires title to the Site, the City agrees to provide to EPA, its authorized officers, employees, representatives, and all other persons performing response actions under EPA oversight, an irrevocable right of access at all reasonable times to the Site and to any other property to which access is required for the implementation of response actions at the Site, to the extent access to such other property is controlled by the City, for the purposes of performing and overseeing response actions at the Site under federal law. EPA agrees to provide reasonable notice to the City of the timing of any response actions to be undertaken at the Property. Except as otherwise provided in this Agreement, EPA retains all of its authorities and rights, including enforcement authorities related thereto, under CERCLA, the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901, ("RCRA") et seq., and any other applicable statute or regulation, including any amendments thereto.

22. Within thirty (30) days after the effective date of this Agreement, the City shall record a certified copy of this Agreement with the County Clerk's Office, Middlesex County, State of New Jersey. Thereafter, each deed, title, or other instrument conveying an interest in the Property shall contain a notice stating that it is subject to this Agreement. A copy of these documents should be sent to the persons listed in Section XVI (Notices and Submissions).
23. The City shall ensure that assignees, successors in interest, lessees, and sublessees, of the Property shall provide the same access and cooperation. The City shall ensure that a copy of this Agreement is provided to any current lessee or sublessee on the Property as of the effective date of this Agreement and shall ensure that any subsequent leases, subleases, assignments or transfers of the Property or an interest in the Property are consistent with this Section, and Section XII (Parties Bound/Transfer of Covenant), of the Agreement.

#### VII. DUE CARE/COOPERATION

24. a. The City shall exercise due care at the Site with respect to the Existing Contamination and shall comply with all applicable local, State, and federal laws and regulations. The City recognizes that the implementation of any response actions at the Site may interfere with the City's use of the property comprising the Site, and may require closure of its operations or a part thereof. The City agrees to cooperate fully with EPA in the implementation of response actions at the Site and further agrees not to interfere with such response actions.
- b. EPA agrees, consistent with its responsibilities under applicable law, to use reasonable efforts to minimize any interference with the City's use of the Site by such entry and response. In furtherance of cooperation between the Parties, EPA is also available for consultation by the City on technical matters related to the work as described in Paragraph 20.a. In the event the City becomes aware of any action or occurrence which causes or threatens a release of hazardous substances, pollutants or contaminants at or from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, the City shall immediately take all appropriate action to prevent, abate, or minimize such release or threat of release, and shall, in addition to complying with any applicable notification requirements under Section 103 of CERCLA, 42 U.S.C. § 9603, or any other

law, immediately notify EPA of such release or threatened release.

#### VIII. CERTIFICATION

25. By entering into this Agreement, the City certifies that to the best of its knowledge and belief it has fully and accurately disclosed to EPA all information known to the City and all information in the possession or control of its officers, directors, employees, contractors and agents which relates in any way to any Existing Contamination or any past or potential future release of hazardous substances, pollutants or contaminants at or from the Site and to its qualification for this Agreement. The City also certifies that to the best of its knowledge and belief it has not caused or contributed to a release or threat of release of hazardous substances or pollutants or contaminants at the Site. If the United States determines, within its sole discretion, that information provided by the City is not materially accurate and complete, the Agreement shall be null and void and the United States reserves all rights it may have.

#### IX. UNITED STATES' COVENANT NOT TO SUE

##### If City Transfers Site to VocTech or Another Governmental Agency or Unit of Government for Redevelopment of the Site for Public Use

26. Subject to the Reservation of Rights in Section X of this Agreement and upon completion of the work specified in Section V (Work To Be Performed) to the satisfaction of EPA, the United States covenants not to sue or take any other civil or administrative action against the City for any and all civil liability for injunctive relief or reimbursement of response costs pursuant to Sections 106 or 107(a) of CERCLA, 42 U.S.C. §§ 9606 or 9607(a) with respect to the Existing Contamination. Upon the City's taking title to the Site, EPA or the United States shall also not seek or record any lien on the Property with respect to any costs incurred or to be incurred by EPA or the United States with respect to the Site.

If the City Sells Site to Any Other Party

27. Subject to the Reservation of Rights in Section X of this Agreement, upon payment of the amount specified in Paragraph 15 of Section IV (Consideration) and upon completion of the work specified in Section V (Work To Be Performed) to the satisfaction of EPA, the United States covenants not to sue or take any other civil or take administrative action against the City for any and all civil liability for injunctive relief or reimbursement of response costs pursuant to Sections 106 or 107(a) of CERCLA, 42 U.S.C. §§ 9606 or 9607(a) with respect to the Existing Contamination. Upon the City's taking title to the Site, EPA and the United States shall also not seek or record any lien on the Property with respect to any costs incurred or to be incurred by EPA or the United States with respect to the Site.

If City Leases Site to Any Party

28. Subject to the Reservation of Rights in Section X of this Agreement, upon payment of the total amount due as specified in Paragraph 17 of Section IV (Consideration), and upon completion of the work specified in Section V (Work To Be Performed) to the satisfaction of EPA, the United States covenants not to sue or take any other civil or administrative action against the City for any and all civil liability for injunctive relief or reimbursement of response costs pursuant to Sections 106 or 107(a) of CERCLA, 42 U.S.C. §§ 9606 or 9607(a) with respect to the Existing Contamination. Upon the City's taking title to the Site, EPA or the United States shall also not seek or record any lien on the Property with respect to any costs incurred or to be incurred by EPA or the United States with respect to the Site.

X. RESERVATION OF RIGHTS

29. The covenant not to sue set forth in Section IX above does not pertain to any matters other than those expressly specified in Section IX (United States' Covenant Not to Sue). The United States reserves and the Agreement is without prejudice to all rights against the City with respect to all other matters, including but not limited to, the following:
- a. claims based on a failure by the City to meet a requirement of this Agreement, including but not limited to Section IV (Consideration), Section VI

(Access/Notice to Successors in Interest), Section VII  
(Due Care/Cooperation), Section XV (Payment of Costs);

- b. any liability resulting from past or future releases of hazardous substances, pollutants or contaminants, at or from the Site caused or contributed to by the City, its successors, assignees, lessees or sublessees;
  - c. any liability resulting from exacerbation by the City, its successors, assignees, lessees or sublessees, of Existing Contamination;
  - d. any liability resulting from the release or threat of release of hazardous substances, pollutants or contaminants, at the Site after the effective date of this Agreement, not within the definition of Existing Contamination;
  - e. criminal liability;
  - f. liability for damages for injury to, destruction of, or loss of natural resources caused or contributed by the City, and for the costs of any natural resource damage assessment incurred by federal agencies other than EPA related solely to such injury caused or contributed by the City; and
  - g. liability for violations of local, State or federal law or regulations caused or contributed to by the City.
30. With respect to any claim or cause of action asserted by the United States, the City shall bear the burden of proving that the claim or cause of action, or any part thereof, is attributable solely to Existing Contamination.
31. Except to the extent provided herein, this Agreement is not intended as a release or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the United States may have against any person, firm, corporation or other entity not a party to this Agreement.
32. Except to the extent provided herein, this Agreement is not intended to limit the right of EPA to undertake future response actions at the Site or to seek to compel parties other than the City to perform or pay for response actions at the Site. Nothing in this Agreement shall in any way restrict or limit the nature or scope of response actions which may be taken or be required by EPA in exercising its

authority under federal law. The City acknowledges that it is purchasing property where response actions may be required.

#### XI. CITY'S COVENANT NOT TO SUE

33. In consideration of the United States' Covenant Not To Sue in Section IX of this Agreement, the City hereby covenants not to sue and not to assert any claims or causes of action against the United States, its authorized officers, employees, or representatives with respect to the Site or this Agreement, including but not limited to, any direct or indirect claims for reimbursement from the Hazardous Substance Superfund established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507, through CERCLA Sections 106(b)(2), 111, 112, 113, or any other provision of law, any claim against the United States, including any department, agency or instrumentality of the United States under CERCLA Section 107 related to the Site, or any claims arising out of response activities at the Site, including claims based on EPA's oversight of such activities, approval of plans for such activities, or any informal advice, guidance, suggestion, or comment by EPA regarding such activities.
34. The City reserves, and this Agreement is without prejudice to, actions against the United States based on negligent actions taken directly by the United States, not including oversight or approval of the City's plans or activities, that are brought pursuant to any statute other than CERCLA or RCRA and for which the waiver of sovereign immunity is found in a statute other than CERCLA or RCRA. Nothing herein shall be deemed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

#### XII. PARTIES BOUND/TRANSFER OF COVENANT

35. This Agreement shall apply to and be binding upon the United States, and shall apply to and be binding on the City, its officers, directors, employees, successors, and assigns. The United States' Covenant Not to Sue in Section VIII and Contribution Protection in Section XVIII shall apply to the City's officers, directors, employees, successors or assigns, but only to the extent that the alleged liability of the officer, director, employee, successor, or assign is based on its status and in its capacity as an officer, director, employee, successor or assign of the City, and not to the extent that the alleged liability arose independently of the alleged liability of the City. Each signatory of a

Party to this Agreement represents that he or she is fully authorized to enter into the terms and conditions of this Agreement and to legally bind such Party.

36. Notwithstanding any other provisions of this Agreement, all of the rights, benefits and obligations conferred upon the City under this Agreement may be assigned or transferred to any person with the prior written consent of EPA, which consent shall not be unreasonably withheld. EPA specifically consents to the assignment of this Agreement to the VocTech and waives further prior written consent of the assignment under this Section provided the VocTech executes the certification required in Section VIII.
37. The City agrees to pay the reasonable costs incurred by EPA to review any subsequent requests for consent to assign or transfer the benefits conferred by this Agreement.
38. In the event of an assignment or transfer of the Property or an assignment or transfer of an interest in the Property, the assignor or transferor shall continue to be bound by all the terms and conditions, and subject to all the benefits, of this Agreement except as EPA and the assignor or transferor agree otherwise and modify this Agreement, in writing. Moreover, prior to or simultaneous with any assignment or transfer of the Property, the assignee or transferee, including the VocTech, must consent in writing to be bound by the terms of this Agreement including but not limited to the certification requirement in Section VIII of this Agreement in order for the Covenant Not to Sue in Section IX to be available to that party. The Covenant Not To Sue in Section IX shall not be effective with respect to any assignees or transferees who fail to provide such written consent to EPA.

#### XIII. DISCLAIMER

39. This Agreement constitutes neither a finding by EPA as to the risks to human health and the environment which may be posed by contamination at the Property nor any representation by EPA that the Property is fit for any particular purpose.

#### XIV. DOCUMENT RETENTION

40. The City agrees to retain and make available to EPA all of its business and operating records, contracts, site studies and investigations, and documents relating to operations at the Property, for at least ten (10) years following the effective date of this Agreement unless otherwise agreed to in writing by the Parties. At the end of ten (10) years, the City shall notify EPA of the location of such documents and shall provide EPA with an opportunity to copy any documents at the expense of EPA. The City shall retain the documentation relating to the work as specified in Section V (Work To Be Performed) for ten (10) years or until completion of work to the satisfaction of EPA, whichever is longer.

#### XV. PAYMENT OF COSTS

41. If the City fails to comply with the terms of this Agreement, including, but not limited to, the provisions of Section IV (Consideration) and Section V (Work To Be Performed) of this Agreement, it shall be liable for all litigation and other enforcement costs incurred by the United States to enforce this Agreement or otherwise obtain compliance.

#### XVI. NOTICES AND SUBMISSIONS

42. The Parties designate the following addressees for the delivery of notices and submissions:

As to the United States:

As to EPA:

Joe Cosentino, On-Scene Coordinator  
Mechanic Street Superfund Site  
U.S. Environmental Protection Agency  
MS 211  
2890 Woodbridge Avenue  
Edison, New Jersey 08837-3679

Site Attorney, Mechanic Street Superfund Site  
New Jersey Superfund Branch  
Office of Regional Counsel  
U.S. Environmental Protection Agency  
290 Broadway  
New York, New York 10007-1866



and for any notice of transmittal of payments to EPA:

Section Chief  
Accounting Operations Section  
Financial Management Branch  
U.S. Environmental Protection Agency  
290 Broadway  
New York, New York 10007-1866

As to the U.S. Department of Justice:

Chief, Environmental Enforcement Section  
Environmental and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Ben Franklin Station  
Washington, D.C. 20044-7611

As to the City of Perth Amboy:

Mayor, City of Perth Amboy  
100 High Street  
Perth Amboy, New Jersey 08861

XVII. TERMINATION

43. If any Party believes that any or all of the obligations under Section VI (Access/Notice to Successors in Interest) are no longer necessary to ensure compliance with the requirements of the Agreement, that Party may request in writing that the other Party agree to terminate the provision(s) establishing such obligations; provided, however, that the provision(s) in question shall continue in force unless and until the party requesting such termination receives written agreement from the other party to terminate such provision(s).

XVIII. CONTRIBUTION PROTECTION

44. With regard to claims for contribution against the City, the Parties hereto agree that the City is entitled to protection from contribution actions or claims as provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2) for matters addressed in this Agreement. The matters addressed in this Agreement are all response actions taken or to be taken and response costs incurred or to be incurred by the United States or any other person for the Site with respect to the Existing Contamination.

45. The City agrees that with respect to any suit or claim for contribution brought by it for matters related to this Agreement it will notify the United States of such impending action in writing no later than sixty (60) days prior to the initiation of such suit or claim.
46. The City also agrees that with respect to any suit or claim for contribution brought against it for matters related to this Agreement it will notify in writing the United States within ten (10) days of service of the complaint on them.

#### XIX. EFFECTIVE DATE

47. The effective date of this Agreement shall be the date upon which EPA issues written notice to the City that EPA has fully executed the Agreement after review of and response to any public comments received.

#### XX. PUBLIC COMMENT

48. This Agreement shall be subject to a thirty (30)-day public comment period, after which EPA may modify or withdraw its consent to this Agreement if comments received disclose facts or considerations which indicate that this Agreement is inappropriate, improper or inadequate.

IT IS SO AGREED:  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
BY:

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Jeanne M. Fox  
Regional Administrator, Region II  
Date

IT IS SO AGREED:  
UNITED STATES DEPARTMENT OF JUSTICE  
BY:

---

Lois J. Schiffer  
Assistant Attorney General  
Date

IT IS SO AGREED:  
CITY OF PERTH AMBOY  
BY:

---

Joseph Vas  
Mayor, City of Perth Amboy, New Jersey  
Date

